

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

JOHN ANTHONY GENTRY,)	
)	
Plaintiff,)	
)	No. 3:17-cv-00020
v.)	
)	Judge Trauger/Magistrate Judge Holmes
THE STATE OF TENNESSEE, ET AL.,)	
)	
Defendants.)	

**RESPONSE OF THE STATE OF TENNESSEE
IN OPPOSITION TO PLAINTIFF’S PENDING MOTIONS**

The State of Tennessee objects to Plaintiff’s pending motions (Doc. Nos. 80, 86, 88, 89). Plaintiff requests the following: (1) pretrial conference, order commencing discovery, and evidentiary hearing (Doc. No. 80); (2) temporary restraining order and preliminary injunction against Defendants Taylor and Lankford¹ (Doc. No. 86); (3) leave to depose Tennessee Circuit Court Judge Joe H. Thompson (Doc. No. 88); and (4) reconsideration of the Court’s order dated January 27, 2017 (Doc. No. 89).

In the order dated January 27, 2017, the Magistrate Judge exempted the parties from initial disclosures required by Fed. R. Civ. P. 26(a). (Doc. No. 7.) The Court will enter a scheduling order with deadlines for the progression of the case at an appropriate time. (Doc. No. 7.)

First, Plaintiff’s request to reconsider the January 27, 2017, order is an untimely objection. Contrary to Plaintiff’s suggestion, the amended complaint does not make the Court’s order moot. Plaintiff’s arguments are similar to those he has already raised. (Doc. Nos. 9, 14.) The District

¹ Although the motion is directed to Defendants Taylor and Lankford, the proposed order commands unnamed persons “in active concert or participation with them” as well as “Defendants” generally. (Doc. No. 86, Exhibit 1.) Plaintiff has failed to show that circumstances clearly demand an injunction or restraining order.

Judge overruled his objections, and declined to modify or set aside any part of the January 27, 2017, order. (Doc. No. 30.)

Second, Plaintiff's requests for a pretrial conference, order commencing discovery, evidentiary hearing, and permission to depose Judge Thompson should all be denied since this case is exempt from initial disclosures. *See* Fed. R. Civ. P. 26(d)(1), and (f)(1). It is not the appropriate time for disclosures and discovery because all Defendants have pending motions to dismiss. The State has moved for dismissal based on lack of subject matter jurisdiction due to Eleventh Amendment immunity (Doc. No. 51). The Eleventh Amendment immunity is "a true jurisdictional bar" and "once raised as a jurisdictional defect, must be decided before the merits." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1046 (6th Cir. 2015). "Limitations on pretrial discovery are appropriate where claims may be dismissed 'based on legal determinations that could not have been altered by any further discovery.'" *Gettings v. Bldg. Laborers Local 310 Fringe Benefits Fund*, 349 F.3d 300, 304 (6th Cir. 2003) (quoting *Muzquiz v. W.A. Foote Mem'l Hosp., Inc.* 70 F.3d 422, 430 (6th Cir. 1995)).

For the reasons stated, Plaintiff's motions (Doc. Nos. 80, 86, 88, 89) should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was filed electronically, and served through the electronic filing system on this the 10th day of July, 2017, to:

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